IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 7636 of 2001(H)

PETITIONER:

A.P.JANARDHANAN,
KULLA HOUSE,
POST EDANAD, KUMBLA,
KASARAGOD DISTRICT.

BY ADV. SRI.K.SHRIHARI RAO

RESPONDENTS:
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1. **STATE OF KERALA REP.BY VIGILANCE DEPARTMENT SECRETARIAT, TRIVANDRUM.**

2. **THE COMMISSIONER, LAND REVENUE, TRIVANDRUM.**

3. **THE DISTRICT COLLECTOR, KASARAGOD.**

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, ALONG WITH OP NO. 27840 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.12436/2001 IN OP. NO.7636/2001

DISMISSED

20/06/2007 **SD/- T.R.RAMACHANDRAN, NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 1.6.95 OF THE 3RD RESPONDENT.

EXT.P2:- COPY OF THE ORDER DT. 8.1.97 OF THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE REPORT DT. 24.7.99 OF THE VIGILANCE TRIBUNAL, KOZHIKKODE.

EXT.P4:- COPY OF THE SHOW CAUSE NOTICE DT. 4.10.99 OF THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE EXPLANATION DT. 2.11.99 ALONG WITH THE ARGUMENT NOTES SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER.

EXT.P6:- COPY OF THE ORDER DT. 12.12.2000 OF THE 1STR RESPONDENT.

/TRUE COPY/

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T.R. RAMACHANDRAN NAIR, J.

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O.P. Nos.7636/2001 & 27840/2002
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Dated this the 20th June, 2007

J U D G M E N T

The petitioner is the same in both the original petitions. Therefore, the original petitions are disposed of by a common judgment. For convenience, the facts of O.P. No. 7636/01 will be referred to.

O.P. No. 7636/2001

The petitioner while working as Village Officer was placed under suspension as per Ext. P1 order dated 1-6-1995. The allegation was that he was involved in Crime No. 2 of 1995 of Kasaragod Vigilance Police Station. In the order itself it has been stated that he will be paid subsistence allowance under Rule 55, Part I, K.S.R. Thereafter the Government by Ext. P2 order directed to conduct a detailed enquiry by Vigilance Tribunal, which was conducted. Ext. P3 is the report of the Vigilance Tribunal wherein he was found guilty of charges. The Tribunal recommended to award the accused officer the penalty of compulsory retirement stipulated under the relevant provisions of

the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Thereafter show cause notice was issued as per Ext. P4 proposing the punishment of compulsory retirement from service. By Ext. P6 order the Government imposed punishment of compulsory retirement from service with effect from the date of suspension. The legality of the above order is under challenge in this writ petition.

2. The date of retirement of the petitioner was 31-12-2000 and Ext. P6 order was passed on 12-12-2000 even though Ext. P3 is dated 24-7-1999. The question is whether the punishment which was given effect to from the date of suspension is valid or not.

3. When disciplinary proceedings are taken and a punishment is imposed it cannot have effect retrospectively. Nobody can be removed or dismissed from service or compulsorily retired with retrospective effect. The order Ext. P6 to that extent is invalid in law. It is well settled that the authority competent can only impose punishment like the one in question from the date of the proceedings and not from an anterior date. This Court and the Apex Court have held

so in various decisions. {See ***Parappuram M.P. Co-op. Society v. Dy. Director, Dept. of D.D.*** (1999 (1) KLT 121 (DB)}.

O.P. No. 27840 of 2001

4. In this O.P. the challenge is against Ext. P3 order issued by the 1st respondent by which an amount of Rs.1,81,688/- which was paid as subsistence allowance was directed to be recovered from the D.C.R.G. payable to the petitioner. The proceedings indicate that no notice was given to him in the matter and it was sought to be recovered as directed by the District Collector while forwarding the pensionary claims of the petitioner.

5. An employee kept under suspension is entitled to be paid subsistence allowance and in this case the relevant provision is Rule 55 of Part I, K.S.R. Accordingly he was paid the subsistence allowance. In the order of suspension itself it was specified that he will be paid subsistence allowance under the relevant rules. Therefore, the fact that he was entitled to be paid the subsistence allowance cannot be disputed and

none of the provisions of the rule enable the authority in question to recover the subsistence allowance from the D.C.R.G. payable to him. It is a clear case where the provisions of Rule 55 of Part I, K.S.R. and the relevant portion of Ext. P1 whereby it was ordered that he will be paid subsistence allowance were overlooked by the District Collector. The learned counsel for the petitioner relied upon the decision of a Division Bench of this Court reported in ***Kerala State Warehousing Corporation & Others v. Pauly John, T.*** (ILR 2006(2) Kerala 653) to contend for the position that while regularising the period of suspension and consequent adjustment of subsistence allowance the rule does not authorise an employer to recover subsistence allowance paid to the employee. After considering the relevant provisions of Part I, K.S.R. their Lordships held in paragraph 11 in the following terms:

> "Possible threat of a break in service, in the present case, has now blown off by treating the period as leave on loss of pay unwittingly or otherwise. But, thereby the employer does not gain a handle to recover the allowances paid during the interregnum, on the plea that it has to be presumed that he is not eligible to draw any pay. The

> concepts, as we pointed out earlier, are not one and the same. The presumption is that what had been paid was not salary or wages; it was only an allowance for the employee and his dependents to tide over a contingency."

Hence, the recovery of subsistence allowance ordered as per Ext. P3 is totally illegal and Ext. P3 is liable to be quashed on that ground. It is declared that there cannot be any recovery of the amount of Rs.1,81,688/- which was paid as subsistence allowance to the petitioner from the D.C.R.G. or any other retirement benefits payable to him.

6. Therefore, the original petitions are disposed of in the following terms:

a) Ext. P6 in O.P. No. 7636/2001 so far as it provides for compulsory retirement with effect from the date of suspension is set aside and the punishment will have effect only from the date of Ext. P6.

b) O.P. No. 27840/2002 stands allowed and Ext. P3 is quashed. There will be a direction to the 3rd respondent to disburse the retirement benefits due to the petitioner within a period of two months from the date of receipt of a copy of this judgment. The Government will be free to proceed in accordance with

the relevant rules, for considering the question of regularisation of the period of suspension and pass orders accordingly. The same also will be done within the period fixed above.

T.R. RAMACHANDRAN NAIR
JUDGE

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